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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

In re A.A. et al., Persons Coming Under
the Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

ANGELA A.,

Defendant and Appellant.

C060028

(Super. Ct. Nos.
JD227921, JD227922,
JD227923)

Mother, Angela A., appeals from the juvenile court's order removing her three minor children from the family home. (Welf. & Inst. Code, § 300; unspecified section references that follow are to the Welfare and Institutions Code.) Mother contends there was insufficient evidence to support the court's ruling. We affirm the order.

FACTS AND PROCEEDINGS

On July 1, 2008, law enforcement officers answered a 911 call and arrived at Mother's residence to find Antonio L., 14

years old, sitting on top of his mother. Antonio explained he was sitting on Mother to stop her from hitting him, and in the officers' presence, Mother continued threatening to "beat" Antonio once the officers left. The officers took Antonio into protective custody.

Antonio was later returned to his mother's custody, after the incident was substantiated. At that time Mother was offered informal services, which she refused because she wanted to open a daycare business in her home.

Nearly three weeks later, on July 26, 2008, law enforcement officers were again called to Mother's residence. Mother had been forcing Antonio to run "suicides," do push-ups, and squats with telephone books on his head for an entire day. While forcing him to exercise, Mother refused Antonio water and hit him repeatedly in the leg with a metal broomstick, leaving three large red swollen marks.

Mother explained to the officers that she was punishing Antonio for going to his father's house without her permission, and she "smacked" him around a few times, but only after he started "mouthing off." She admitting hitting Antonio with a metal broomstick but said "it's not like he did not deserve it. That mother fucker asked me for it, so what is a good mother supposed to do but beat her kid when they ask."

Mother was subsequently arrested for felony child abuse, and Antonio and his half-sisters, were placed in protective custody. Four days later, the Department of Health and Human Services (the Department) filed section 300 petitions on behalf

of all three children alleging the children were at substantial risk of suffering serious physical harm. The petitions each cited Mother's history of abusing Antonio, including but not limited to hitting him repeatedly with a metal broomstick. The children were detained the following day.

Mother later refused to be interviewed by the Department, saying she did not want to be misquoted and the social worker would not allow her to tape the interview. She continued refusing to be interviewed even after she was invited to bring her attorney. Mother did, however, tell the social worker that Antonio was lying and law enforcement had blown "it all out of proportion" and any further involvement by the Department was "unnecessary."

Antonio told the investigating social worker that he believed his Mother abused him on July 25, 2008, because she was angry with him for telling his maternal grandfather that the Department had already intervened in the family.

The nurse practitioner who examined Antonio on July 28, 2008, confirmed that there were "faint patterned parallel linear bruises on [Antonio's] right lateral thigh," and Antonio was still experiencing pain in his leg.

On September 2, 2008, the matter proceeded to a combined jurisdictional/dispositional hearing. Mother testified at the hearing, defending her decision to discipline Antonio for leaving the house without her permission. She again admitted hitting Antonio but claimed it was in self-defense. Mother also

admitted to spanking her daughters with her hand, her "flip-flop," and her belt.

After considering the Department's report and Mother's testimony, the juvenile court sustained the petitions. The court went on to find "by clear and convincing evidence: [¶] There is a substantial danger to the [children's] physical health/safety, protection or emotional well-being or would be if the [children] were returned home and there are no reasonable means by which the [children's] well-being can be protected without removing [them] from the parents' . . . physical custody."

The court also found reasonable efforts were made to prevent or eliminate the need for removal from Mother's home, but the "extent of progress made by the mother, . . . toward alleviating or mitigating the causes necessitating placement has been . . . absent." Mother appeals the court's order.

DISCUSSION

Mother contends there is insufficient evidence to support removal of the minors. We disagree.

To remove a child from a parent's physical custody, the juvenile court must find clear and convincing evidence that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's

. . . physical custody.” (§ 361, subd. (c)(1).) “The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.” (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, overruled on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

Removal findings are reviewed under the substantial evidence test, drawing all reasonable inferences to support the findings and noting that issues of credibility are matters for the juvenile court. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) Further, evidence of past conduct may be probative of current conditions, particularly where there is reason to believe the conduct will continue in the future. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.)

Mother relies on *In re Joel H.* (1993) 19 Cal.App.4th 1185 (*Joel H.*), to support her claim of insufficient evidence to support the removal order. Her reliance is misplaced.

In *Joel H.*, the Court of Appeal overturned a section 387 removal order because the evidence admitted established only that Joel’s guardians “disciplined Joel by spanking him with a hand to his bottom . . .; Joel was ‘shaken a couple of times to achieve his attention’; and [his guardian] on two occasions held Joel’s arm up, though she did not pull him up off the floor, while she spanked him.” (*Joel H.*, *supra*, 19 Cal.App.4th at p. 1202.) The Court of Appeal further found “[t]here was no evidence that these acts resulted in actual physical harm or posed a danger of such harm to Joel.” (*Ibid.*)

Here, however, the evidence established that Mother's efforts to discipline Antonio were more violent. She threatened to beat him, repeatedly hit his leg with a metal broomstick, and forced him to perform strenuous exercise for an extended period of time without water or rest. And here, unlike in *Joel H.*, Mother's "discipline" did cause physical harm to the minor child on at least one occasion when she left red welts on Antonio's leg.

Additionally, Mother maintained that her method of discipline was not inappropriate. She even blamed Antonio for making her hit him. Her refusal to acknowledge the injuries she inflicted on her child and accept responsibility for her actions are clear evidence that she would continue to abuse Antonio and possibly his siblings had they been returned to her after the hearing.

In sum, we conclude the evidence was sufficient proof that the minor children's physical health, well-being, safety, and protection would have been in danger had the children been returned to Mother before she had the opportunity to participate in and complete the reunification services provided to her by the Department.

DISPOSITION

The order is affirmed.

_____ HULL _____, J.

We concur:

_____ BLEASE _____, Acting P. J.

_____ BUTZ _____, J.